Basic information

2013/0081(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Third-country nationals: conditions of entry and residence for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. Recast Repealing Directive 2004/114/EC 2002/0242(CNS) Repealing Directive 2005/71/EC 2004/0061(CNS) **Subject** 3.50.06 Research staff, researchers 4.40.06 Teachers, trainers, pupils, students 7.10 Free movement and integration of third-country nationals 7.10.04 External borders crossing and controls, visas	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	WIKSTRÖM Cecilia (ALDE)	24/04/2013
	Shadow rapporteur CORAZZA BILDT Anna Maria (PPE) FAJON Tanja (S&D) LAMBERT Jean (Verts/ALE) KIRKHOPE Timothy (ECR) ALBIOL GUZMÁN Marina (GUE/NGL) WINBERG Kristina (EFD)	

Former committee responsible	Former rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	WIKSTRÖM Cecilia (ALDE)	24/04/2013

Former committee for opinion	Former rapporteur for opinion	Appointed
EMPL Employment and Social Affairs	PAPADOPOULOU Antigoni (S&D)	27/05/2013
JURI Legal Affairs	STOYANOV Dimitar (NI)	15/04/2013

Council of the European Union	

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3298	2014-03-03
Justice and Home Affairs (JHA)	3455	2016-03-10

European Commission	

Commission DG	Commissioner
Migration and Home Affairs	AVRAMOPOULOS Dimitris

Key events

Date	Event	Reference	Summary
25/03/2013	Legislative proposal published	COM(2013)0151	Summary
16/04/2013	Committee referral announced in Parliament, 1st reading		
05/11/2013	Vote in committee, 1st reading		
12/11/2013	Committee report tabled for plenary, 1st reading	A7-0377/2013	Summary
24/02/2014	Debate in Parliament		
25/02/2014	Decision by Parliament, 1st reading	T7-0122/2014	Summary
25/02/2014	Results of vote in Parliament		
03/03/2014	Debate in Council		
05/02/2015	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
30/11/2015	Approval in committee of the text agreed at 1st reading interinstitutional negotiations		
11/03/2016	Council position published	14958/2/2015	Summary
11/04/2016	Committee referral announced in Parliament, 2nd reading		
28/04/2016	Vote in committee, 2nd reading		
02/05/2016	Committee recommendation tabled for plenary, 2nd reading	A8-0166/2016	Summary
11/05/2016	Decision by Parliament, 2nd reading	T8-0216/2016	Summary
11/05/2016	Results of vote in Parliament		
11/05/2016	Debate in Parliament		
11/05/2016	Final act signed		
11/05/2016	End of procedure in Parliament		
21/05/2016	Final act published in Official Journal		

Technical information

Procedure reference	2013/0081(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Recast
Legislative instrument	Directive
Amendments and repeals	Repealing Directive 2004/114/EC 2002/0242(CNS) Repealing Directive 2005/71/EC 2004/0061(CNS)
Legal basis	Treaty on the Functioning of the European Union TFEU 079-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/8/05129

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE514.798	03/07/2013	
Amendments tabled in committee		PE519.454	11/09/2013	
Committee opinion	JURI	PE514.664	19/09/2013	
Committee opinion	EMPL	PE516.703	07/10/2013	
Committee report tabled for plenary, 1st reading/single reading		A7-0377/2013	12/11/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0122/2014	25/02/2014	Summary
Committee draft report		PE580.500	08/04/2016	
Committee recommendation tabled for plenary, 2nd reading		A8-0166/2016	02/05/2016	Summary
Text adopted by Parliament, 2nd reading		T8-0216/2016	11/05/2016	Summary

Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	06414/2016	29/02/2016	
Council position	14958/2/2015	11/03/2016	Summary
Draft final act	00018/2016/LEX	11/05/2016	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2013)0151	25/03/2013	Summary
	SWD(2013)0077		

Commission working document (SWD)		25/03/2013	
Commission working document (SWD)	SWD(2013)0078	25/03/2013	
Commission response to text adopted in plenary	SP(2014)446	20/05/2014	
Commission communication on Council's position	COM(2016)0184	05/04/2016	Summary

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	ES_PARLIAMENT	COM(2013)0151	04/05/2013	
Contribution	PT_PARLIAMENT	COM(2013)0151	30/05/2013	
Contribution	IT_SENATE	COM(2013)0151	26/06/2013	
Contribution	CZ_SENATE	COM(2013)0151	29/08/2013	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES3516/2013	19/09/2013	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Directive 2016/0801
OJ L 132 21.05.2016, p. 0021 Summary

Third-country nationals: conditions of entry and residence for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. Recast

2013/0081(COD) - 11/05/2016 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a legislative resolution on the Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast).

In line with the recommendation for second reading made by the Committee on Civil Liberties, Justice and Home Affairs, Parliament **approved, unamended, the Council position at first reading**.

Parliament also approved a **joint statement by the European Parliament and the Commission** on the ground for rejection specified in point (f) of Article 20(2).

The European Parliament and the Commission understand point (f) of Article 20(2) of this Directive as allowing Member States to reject an application only on a case-by-case basis and taking into account the specific circumstances of the third-country national and the principle of proportionality and on the basis of evidence or serious and objective reasons.

The Commission will ensure that Member States implement this provision in line with this interpretation when transposing the Directive, and will inform the Parliament and the Council thereof.

The European Parliament and the Commission consider that the inclusion of this provision in this Directive should not constitute a precedent for future legal migration instruments.

Third-country nationals: conditions of entry and residence for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. Recast

2013/0081(COD) - 11/05/2016 - Final act

PURPOSE: to adopt new rules with a view to making the EU more attractive for students and researchers from third countries.

LEGISLATIVE ACT: Directive (EU) 2016/801 of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing

CONTENT: this Directive consists of a **recast of Council directives 2004/114/EC and 2005/71/EC.** It aims to establish a coherent legal framework for different categories of third- country nationals who wish to come to the EU. It provides for **harmonised conditions of entry and residence in the EU** for researchers, students, trainees and volunteers taking part in the European Voluntary Service from third countries.

The Directive aims to **make the European Union an attractive place for research and innovation,** and to advance it in the global competition for talent, leading to strengthening its competitiveness, boosting growth and creating jobs.

Scope: the Directive's application is **mandatory** for third-country nationals applying to enter or who have entered the territory of a Member State for the purpose of research, studies, training or voluntary service in the European Voluntary Service.

Member States **have the option** of applying the Directive's provisions to third country nationals wishing to enter for the purposes of participating in a school exchange scheme, or educational project, volunteers not covered by the European Voluntary Service and au pairs.

Regarding trainees, the Directive abolishes the distinction between remunerated and unremunerated trainees.

General admission conditions: the directive lists all the documents that can be required for entry, depending on the specific national system or the specific situation of the third-country national.

If so requested by the Member State, the applicant must provide evidence that during the planned stay, he will have **sufficient resources** to cover subsistence costs without having recourse to the Member State's social assistance system, and return travel costs.

The Directive gives Member States the option to require the applicant to provide the address where he or she will be residing on its territory. It **makes it obligatory for Member States to examine applications** also when the third-country national concerned is already residing in that Member State.

Approval of host entities: Member States shall be **free to decide** whether they will require that admission under this Directive will take place through approved host entities or not.

The Directive makes the approval procedure for research organisations optional, and also introduces an optional approval procedure for higher education institutions, education establishments, and organisations responsible for a voluntary service scheme or entities hosting trainees. In case a Member State introduces such procedures, applications are facilitated.

Authorisations and duration of stay: the Directive provides for authorisations of:

- **a minimum of two years for students and researchers covered by programmes** (instead of one year for those not covered by programmes);
- **one year maximum** for au pairs;
- **a maximum of six months for trainees**. If the duration of the agreement is longer than six months, the duration of the validity of the authorisation may correspond to the period concerned in accordance with national law.

Grounds for rejection: the Directive aligns to a great extent, the grounds for rejection to those of the Intra Corporate Transferee Directive. Furthermore, it allows member States to reject an application where the Member State has evidence or serious and objective grounds to establish that the third-country national would **reside for purposes other than those for which he or she applies to be admitted.**

Similarly to the grounds for rejection, the Directive, to a great extent, aligns the grounds for withdrawal or non-renewal to those of the Intra Corporate Transferee Directive.

Specific conditions for trainees: apart from presenting a training agreement, which provides for a theoretical and practical training, with a host entity, the applicant must prove of having obtained a higher education degree **within the two years preceding the date of application** or of pursuing a course of study that leads to a higher education degree.

Member States may require the traineeship to be **in the same field** and at the **same qualification level** as the higher education degree or the course of study followed.

Economic activities by students: students from third countries will have access to the labour market to **15 hours per week** outside the time allocated for studying.

Job-searching/setting-up of a business: the Directive provides for the possibility for researchers and students to stay on the territory of the Member State that had issued them an authorisation under the Directive, to seek employment or set up a business for a period of at least **9 months after the end of their research or studies.**

Member States may also require that the employment a third-country national is seeking or the business he e is in the process of setting up corresponds to the level of research or of studies completed. Regarding students, the Directives gives Member States the possibility of applying these provisions only to those having **achieved a minimum level of academic degree** (which must not be higher than level 7 of the European Qualifications Framework, i.e. Masters level).

Intra-EU mobility: third-country nationals conducting research or following studies in one member State may, in certain cases, **enter another Member State for the purposes of carrying out part of their research or studies on notification**. This is a simplified procedure, thanks to which students and researchers can move to a second Member State on the basis of the authorisation of the first Member State:

- **for researchers,** this procedure applies in the case of short-term mobility (up to **6 months)**. For mobility going beyond this period, the Member State can apply either the notification procedure, or alternatively an application procedure. Researchers' family members are entitled to move with the researcher on the basis of the same rules;

- **students** who hold a valid authorisation issued by the first Member State and who are covered by a Union that comprises mobility measures are entitled to enter and stay in order to carry out part of their studies in a higher education institution in one or several second Member States for a period **up to 360 days per Member State**.

Procedural guarantees: the Directive provides a maximum period of 90 days for Member States to decide on applications, except when the admission procedure is related to an approved host entity. In this case, the deadline is 60 days.

ENTRY INTO FORCE: 22.5.2016.

TRANSPOSITION: by 23.5.2018.

Third-country nationals: conditions of entry and residence for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. Recast

2013/0081(COD) - 25/03/2013 - Legislative proposal

PURPOSE: to lay down the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing.

PROPOSED ACT: Directive of the European Parliament and of the Council (recast of Directives 2005/71/EC and 2004/114/EC).

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the European Union’s working age population has practically stopped growing and over the next couple of years it will start shrinking. The EU is also facing a situation of 'innovation emergency'. Europe is spending 0.8% of GDP less than the US and 1.5% less than Japan every year on Research & Development (R&D). in addition, thousands of the best researchers and innovators have moved to countries where conditions are more favorable.

To counterbalance this lack of manpower, immigration from outside the EU is one source of highly skilled people, and third-country national students and researchers in particular are groups which are increasingly sought after and which the EU needs to actively attract.

Allowing third-country nationals to acquire skills and knowledge through a period of training in Europe encourages “brain circulation” and supports cooperation with third countries.

However, in the absence of a clear legal framework, there is also a risk of exploitation to which trainees and au-pairs are particularly exposed, with the subsequent risk of unfair competition on the labour market.

With a view to better optimising those benefits and properly tackling those risks, and taking account of the similarities of the challenges faced by these categories of migrants, this proposal amends Council Directive 2004/114/EC (“Students’ Directive”) on the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service:

- extending its scope to remunerated trainees and au-pairs and
- making mandatory provisions on unremunerated trainees that are currently discretionary, as well as
- Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research (“Researchers’ Directive”).

The proposal seeks to remedy the shortcomings highlighted in the implementation reports of the two Directives [see COM(2011)901 and 587] on the conditions of admissions in particular (visas, mobility aspects…) and procedural safeguards.

IMPACT ASSESSMENT: the following options were considered:

- *Option 1 (baseline):* the Member States would continue to apply different and diverging rules with respect to admission conditions (e.g. the granting of visas);
- *Option 2:* Increased communication efforts (in particular in case of researchers), and strengthened enforcement of the current rules;
- *Option 3:* Improvement of admission conditions, rights and procedural guarantees whereby Member States would be obliged to (i) grant the requisite visas to the third-country national (students and other categories) who has submitted an application and (ii) introduce a compulsory deadline for decisions on an application (60 days); (iii) provide for the right of students to work during their period of study for a minimum of 15 hours per week;
- *Option 4:* Further improvement of admission conditions, rights also on intra-EU mobility and procedural guarantees: (i) access to job-seeking following completion of studies or research project; (ii) **extended scope to au-pairs and remunerated trainees**; (iii) possibility to issue long-stay visas or residence permits; (iv) increased intra-EU mobility for researchers, students and remunerated trainees; (v) specific, more favorable rules applicable to beneficiaries of EU programmes (e.g. Erasmus Mundus or Marie Curie); (vi) right of students to work for a minimum of 20 hours per week as of the first year of residence ; (vii) after finalization of their studies/research, students and researchers would be allowed to stay on the territory to identify work opportunities for a period of 12 months; (viii) decisions on applications within 60 days (all groups), and within 30 days for Erasmus Mundus and Marie Curie fellows.

Option 4 appears to be the most cost-effective option to meet the key objectives and brings about positive economic and social impacts. The main disadvantage of legislative changes would be the costs involved: Member States would have to make modifications to their legislative frameworks.

LEGAL BASIS: Article 79(2) points (a) and (b) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the proposal’s overall objective is to support social, cultural and economic relationships between the EU and third countries, foster the transfer of skills and know-how and promote competitiveness while, at the same time, provide for safeguards ensuring fair treatment of these groups of third-country nationals.

Chapter I – General provisions: the proposal has two specific objectives:

- to set out the conditions of entry and residence of third-country nationals to the territory of the Member States for **a period exceeding three months** for the purposes of research, studies, pupil exchange, **remunerated and unremunerated training**, voluntary service and **au pairing**;
- to set out the conditions of entry and residence of third-country national students and remunerated trainees in Member States other than the Member State which first grants the third-country national an authorisation.

Scope: the proposal extends the scope of the “Student” Directive to include **remunerated trainees and au-pairs**. The proposal would not, however, apply to third-country nationals who are EU long-term residents given their more privileged status and their specific type of residence permit, or refugees, those residing in a Member State on a strictly temporary basis in accordance with Union legislation.

Member States may grant **more favourable conditions** for the persons to whom the proposal for Directive applies, however only in relation to certain specific provisions that concern family members of researchers, rights to equal treatment, economic activities and procedural safeguards.

Chapter II – Admission:

General principle: an applicant who satisfies all the general and specific conditions for admission shall be granted a residence permit or a long-stay visa by the Member State where the application has been made. The proposal lays down the general conditions that applicants must fulfil in order to be admitted to a Member State, besides the specific conditions that apply to the different categories of third-country nationals laid down in the proposal. The general conditions are very much in line with those developed in the existing acquis on legal migration, and include valid documents, sickness insurance and minimum resources.

Specific conditions:

- the specific conditions of admission for **researchers** which already exist in the Researchers' Directive are maintained. The proposal lists the elements that should be contained in the hosting agreement: title and purpose of the research project, the confirmation of the organisation that it is hosting the researcher so that he or she can complete the research project, the start and end date of the research project, etc. For researchers to be aware of

research organisations that can enter into hosting agreements, emphasis is placed in the proposal on the need for the list of approved organisation to be publicly available and up-dated regularly;

- for **students**, the specific conditions are those in the “Students’ Directive”;

- for pupils, remunerated and unremunerated **trainees**, volunteers and a**u-pairs**, the specific conditions are that these persons are required **to show evidence of the organisation** that is responsible for their exchange, training or, volunteering.

- for **au-pairs**: in addition, there needs to be evidence that the host family accepts responsibility for example as far as subsistence and accommodation are concerned. The au-pair stay also needs to be based on an agreement between the au-pair and the host family defining his /her rights and obligations;
- for **remunerated trainees**, the training programme, its duration, conditions of supervision and working conditions need to be specified. In order to avoid situations in which trainees are used as 'cheap labour', the host entity may be obliged to declare that the third-country national is not filling a job.

Chapter III – Authorisations and duration of residence: a series of provisions set out the information that should be included on the third-country national's residence permit or long-term visa. For **researchers and students** an authorisation should be granted for **at least one year**. For all other groups, the authorisation is limited to **one year as a rule**, with the possibility for exceptions.

Chapter IV – Grounds for refusal, withdrawal or non-renewal of authorisations: the provisions lay down the mandatory and possible grounds for refusing, withdrawing or not renewing an authorisation, such as the general and specific conditions for admission no longer being met, false documents etc., which are standard conditions under the existing migration Directives.

Chapter V – Rights:

to ensure the fair treatment of third-country nationals falling under the scope of the Directive, a new provision entitles them to **equal treatment** under the Single Permit Directive. More favourable rights to equal treatment with nationals of the host Member State as regards branches of social security as defined in Regulation No 883/2004 on the coordination of **social security schemes** are maintained for third-country national researchers, without the possibility for the limitations laid down by the Single Permit Directive. Furthermore, school pupils, volunteers, unremunerated trainees and au-pairs will benefit from equal treatment rights with nationals of the host Member State as regards **access to goods and services** and the supply of goods and services made available to the public **independently on whether Union or national law gives them access to the labour market**.

Right to work: provisions exist in the proposal whereby researchers and students are given the right to work, with Member States being able to **set certain limits**. Researchers, as was the case under Directive 2005/71, are allowed to teach in accordance with national legislation. Regarding **students**, whereas under Directive 2004/114/EC students were allowed to work for a minimum of 10 hours per week, this period has been increased to **20 hours**. With respect to students' access to economic activities, Member States may continue take into consideration their labour market situation but this should be done in a **proportionate way** in order not to systematically endanger the right to work.

The proposal introduces the possibility for students and researchers, if they fulfil the general admission conditions of the proposal (except for the condition on being a minor), to stay in the Member State **for 12 months upon finalisation of their studies/research in order to look for work or set up a business**. This provision has the potential to make the Member States more competitive in the search for talents on a global stage. It would however not be an automatic work permit. In a period of more than 3 and less than 6 months, Member States could ask the third-country nationals to provide documentation that they are genuinely seeking for a job (for example, copies of the letters and CVs sent to employers) or are in the process of setting up a business. After 6 months, they could also ask third- country nationals to provide evidence that they have a genuine chance of being engaged or of launching a business.

The proposal includes specific provisions on the admission and access to the labour market of researchers' family members in derogation to Directive 2003/86/EC with a view to increasing the EU’s attractiveness to third-country national researchers.

Chapter VI – Mobility between Member States: a series of articles set out the conditions under which researchers, students and trainees can move between the Member States, in order to facilitate such mobility:

- **for researchers**, under Directive 2005/71/EC, the period for which they are allowed to move to a second Member State on the basis of the hosting agreement concluded in the first Member State has been extended from 3 to **6 months** (N.B. in line with the provisions of the Blue Card Directive, researchers' family members can move between Member States together with the researcher).
- **for students**, provisions would also allow them to move to a second Member State for a period of **up to 6 months** on the basis of the authorisation granted by the first Member State . Specific rules apply to third country nationals who come under EU mobility programmes, for example the current Erasmus Mundus or Marie Curie programmes, in order to simplify the exercise of mobility.

Chapter VII – Procedure and transparency: the proposal introduces a **time-limit** that obliges Member States to decide on the complete application for an authorisation and notify the applicant in writing within **60 days** (applying for all groups), and **within 30 days** for Union programmes including mobility measures. Procedural guarantees include the possibility of a legal challenge against a decision rejecting an application as well as the requirement for the authorities to give reasons for such decisions in writing, and ensuring respect for the right to a legal remedy.

Provisions are also included in regard to communication: the Member States would be required to make information available on the entry and residence conditions as set by this proposal, including on approved research organisations and on fees.

Taxes and fees: Member States may charge fees for the processing of applications. However, the amount of such fees should not endanger the fulfilment of the Directive's objectives.

Chapter VIII - Final provisions: Member States would be required to establish national contact points to exchange information on third-country nationals covered by the proposal who move between Member States. Such national contact points already exist in relation to certain existing migration Directives such as the Blue Card Directive. Member States would be required to communicate to the Commission statistics on the numbers of third-country nationals granted authorisations.

BUDGETARY IMPLICATION: the proposal has no implications for the EU's budget.

Third-country nationals: conditions of entry and residence for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. Recast

2013/0081(COD) - 12/11/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Cecilia WIKSTRÖM (ALDE, SE) on the proposal for a directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing (recast).

The parliamentary committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should be to amend the Commission's proposal as follows:

Fees: Members considered that Member States should consider waiving fees for entry and residence of third-country nationals for the purposes of this Directive. Should Member States require third-country nationals to pay fees, those should be **proportionate** to the purpose of the stay and should not constitute an obstacle to the objectives of the Directive.

Information to be provided to applicants: Members asked that Member States inform third-country nationals of the rules applicable to their particular case so as to ensure transparency and legal certainty and thus encourage them to come to the Union.

Third-country nationals should be provided with all the information that is relevant to the procedure, including general documentation about studies, exchange or research programmes but also specific information about applicants' rights and obligations, in a manner that is easily accessible and understandable.

New definitions: host entity and host family: Members added two new definitions:

- 'host entity' means the educational establishment, research organisation, enterprise or vocational training establishment, organisation operating pupil exchanges or organisation responsible for the voluntary service scheme to which the third-country national is assigned;
- 'host family' means the family temporarily receiving the au-pair and letting him/her share its daily family life in the territory of a Member State on the basis of an agreement concluded between the host family and the au-pair.

More favourable provisions: Members extended the scope of the clause on more favourable provisions **to all the articles of the proposed directive**, with the exception of those relating to general and specific conditions, so as to avoid non-harmonised conditions throughout the European Union.

Adequate resources: Members support the Commission's proposal whereby a third country national would have to provide evidence that s/he has sufficient resources to cover subsistence, training and return travel costs. Members consider, however, that it should not be necessary to provide such evidence **if the third-country national concerned can prove that he/she is in receipt of a grant or scholarship**, that he/she has received an undertaking of sponsorship from a host family or a firm offer of work or that an organisation operating pupil exchanges or the voluntary service scheme declares itself responsible for the subsistence of the pupil or the volunteer throughout the period of his/her stay.

No limits on exchanges: Members deleted the Commission's text proposing that Member States may confine the admission of school pupils participating in an exchange scheme to nationals of third countries which offer the same possibility for their own nationals. Likewise, Members deleted a provision in the Commission's proposal requiring a trainee to prove that they have previous relevant education or qualifications or professional experience to benefit from the work experience.

Maternity costs: Members consider that requiring an au-pair to provide extra separate evidence that the host family will cover costs related to maternity seems excessive.

Accreditation procedure: Members added a provision that after successful authorisation and grant of a visa, the host entity should be registered with an accreditation system, in order to facilitate future application procedures.

Validity of authorisations: Members consider that Member States should issue an authorisation for students which shall be for a period of at least one year or, **when the duration of their studies is longer than one year, for the whole duration of their studies**. This would also be the case for au pairs who would be authorised to remain for the entire pupil exchange programme.

Reasons for refusal of authorisations: Members listed the reasons for which Member States might be able to refuse an authorisation:

- where the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment;
- where the host family, or, if applicable, any intermediary organisation involved in the placement of the au-pair, has been sanctioned in accordance with national law for breach of the conditions and/or objectives of au-pair placements and/or illegal employment;

- where the host entity or educational establishment was established for the sole purpose of facilitating entry.

Member States **should not renew an authorisation** for the same reasons, but also if:

- where the host family has been sanctioned for breach of the conditions and/or objectives of au-pair placements and/or for illegal employment;
- where the third-country national is residing for purposes other than those for which he/she was authorised to reside;
- when the maximum periods of access to the labour market are not respected;
- **where the student does not make acceptable progress in the relevant studies in accordance with national legislation or administrative practice.** The Member State concerned may withdraw or refuse to renew an authorisation on this ground only by a decision stating specific reasons based on the evaluation of the educational establishment, which shall be consulted on the student's progress;
- for reasons of public policy, public security or public health. Public policy or public security grounds shall be based exclusively on the **personal conduct of the third-country national concerned**.

When a Member State withdraws an authorisation on one of the grounds cited above, the third-country national shall be entitled to stay on the territory of that Member State **if he/she finds another host entity or host family in order to finish his/her studies or research** or for another purpose for which the authorisation was granted.

Equal treatment: Members suggested that trainees and au-pairs should enjoy equal treatment rights with nationals of the host Member State as regards the rights related to the Single Permit to work and reside on the territory of a Member State. The situation of the labour market in the host Member State should be taken into account, but not in a systematic manner which could result in students being excluded from the labour market.

Staying on the territory of a Member State after finalisation of research or studies: Members suggested that after finalisation of research or studies in the Member State, third-country nationals should be entitled to stay on the territory of the Member State for a period of **18 months** (instead of 12) in order to look for work or set up a business. In a period of more than six and less than nine months (instead of 3 and 6), third-country nationals could be requested to provide evidence that they continue to seek employment or are in the process of setting up a business. After a period of nine months, third-country nationals could additionally be requested to provide evidence that they have a genuine chance of being engaged or of launching a business.

Family reunification: Members called for measures on family reunification for researchers to be extended to students.

Mobility rights between Member States: Members extended the measures proposed by the Directive as regards mobility between Member States to **volunteers**, as well as researchers, students, and trainees. Mobility measures provided for researchers in the framework of the European programmes should also be extended to volunteers and trainees whether they are remunerated or not.

Delay for the authorisation procedure: Members called on the competent authorities of the Member States to decide on the complete application for an authorisation and should notify the applicant in writing, as soon as possible and at the latest within **30 days** (the Commission proposed 60 days) **from the date on which the application was lodged**. In the event that their national law provides for the possibility of an appeal before an administrative authority, the competent authorities of the Member States shall decide on the appeal at the latest within 30 days from the date on which the appeal was lodged.

Fast-track procedure: the current Students Directive includes an article on fast-track-procedure for issuing residence permits or visas and the Rapporteur suggests re-including this fast-track procedure for **students and school pupils and extending it to researchers**.

Application procedure: lastly, Members provided for a measure allowing Member States to facilitate the application procedure by allowing third-country nationals to apply and to be able to complete the procedure for any Member State in the embassy or consulate of the Member State which is most convenient for the applicant.

Third-country nationals: conditions of entry and residence for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. Recast

2013/0081(COD) - 25/02/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 578 votes to 79 with 21 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing (recast).

Parliament’s position adopted at first reading under the ordinary legislative procedure amended the Commission’s proposal as follows:

Fees: Parliament considered that Member States should consider waiving fees for entry and residence of third-country nationals for the purposes of this Directive. Should Member States require third-country nationals to pay fees, those should be **proportionate** to the purpose of the stay and should not constitute an obstacle to the objectives of the Directive. Parliament also considered that where the third-country national pays those fees, that third-country national should be entitled to be reimbursed by the host entity or the host family respectively.

Information to be provided to applicants: Parliament asked that Member States inform third-country nationals of the rules applicable to their particular case so as to ensure transparency and legal certainty and thus encourage them to come to the Union.

Third-country nationals should be provided with all the information that is relevant to the procedure, including general documentation about studies, exchange or research programmes but also specific information about applicants' rights and obligations, in a manner that is easily accessible and understandable.

New definitions: host entity and host family: Parliament added two new definitions:

- 'host entity' means the educational establishment, research organisation, enterprise or vocational training establishment, organisation operating pupil exchanges or organisation responsible for the voluntary service scheme to which the third-country national is assigned;
- 'host family' means the family temporarily receiving the au-pair and letting him/her share its daily family life in the territory of a Member State on the basis of an agreement concluded between the host family and the au-pair.

More favourable provisions: Parliament extended the scope of the clause on more favourable provisions to **all the articles of the proposed directive**, with the exception of those relating to general and specific conditions, so as to avoid non-harmonised conditions throughout the European Union.

Adequate resources: Parliament supported the Commission's proposal whereby a third country national would have to provide evidence that s/he has sufficient resources to cover subsistence, training and return travel costs. Members consider, however, that it should not be necessary to provide such evidence **if the third-country national concerned can prove that he/she is in receipt of a grant or scholarship**, that he/she has received an undertaking of sponsorship from a host family or a firm offer of work or that an organisation operating pupil exchanges or the voluntary service scheme declares itself responsible for the subsistence of the pupil or the volunteer throughout the period of his/her stay.

No limits on exchanges: Parliament deleted the Commission's text proposing that Member States may confine the admission of school pupils participating in an exchange scheme to nationals of third countries which offer the same possibility for their own nationals. Likewise, Members deleted a provision in the Commission's proposal requiring a trainee to prove that they have previous relevant education or qualifications or professional experience to benefit from the work experience.

Maternity costs: Parliament considered that requiring an au-pair to provide extra separate evidence that the host family will cover costs related to maternity seems excessive.

Accreditation procedure: Parliament added a provision that after successful authorisation and grant of a visa, the host entity should be registered with an accreditation system, in order to facilitate future application procedures.

Validity of authorisations: Parliament considered that Member States should issue an authorisation for students which shall be for a period of at least one year or, when the duration of their studies is longer than one year, for the whole duration of their studies. This would also be the case for au pairs who would be authorised to remain for the entire pupil exchange programme.

Reasons for refusal of authorisations: Parliament listed the reasons for which Member States might be able to refuse an authorisation:

- where the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment;
- where the host family, or, if applicable, any intermediary organisation involved in the placement of the au-pair, has been sanctioned in accordance with national law for breach of the conditions and/or objectives of au-pair placements and/or illegal employment;
- where the host entity or educational establishment was established for the sole purpose of facilitating entry.

Member States should **not renew an authorisation** for the same reasons, but also:

- where the host family has been sanctioned for breach of the conditions and/or objectives of au-pair placements and/or for illegal employment;
- where the third-country national is residing for purposes other than those for which he/she was authorised to reside;
- when the maximum periods of access to the labour market are not respected;
- **where the student does not make acceptable progress** in the relevant studies in accordance with national legislation or administrative practice. The Member State concerned may withdraw or refuse to renew an authorisation on this ground only by a decision stating specific reasons based on the evaluation of the educational establishment, which shall be consulted on the student's progress;
- for reasons of public policy, public security or public health. Public policy or public security grounds shall be based exclusively on the personal conduct of the third-country national concerned.

When a Member State withdraws an authorisation on one of the grounds cited above, the third-country national shall be entitled to stay on the territory of that Member State if he/she **finds another host entity or host family in order to finish his/her studies** or research or for another purpose for which the authorisation was granted.

Equal treatment: Parliament suggested that trainees and au-pairs should enjoy equal treatment rights with nationals of the host Member State as regards the rights related to the Single Permit to work and reside on the territory of a Member State. The situation of the labour market in the host Member State should be taken into account, but not in a systematic manner which could result in students being excluded from the labour market.

Staying on the territory of a Member State after finalisation of research or studies: Parliament suggested that after finalisation of research or studies in the Member State, third-country nationals should be entitled to stay on the territory of the Member State for a period of **18 months** (instead of 12) in

order to look for work or set up a business. In a period of more than six and less than nine months (instead of 3 and 6), third-country nationals could be requested to provide evidence that they continue to seek employment or are in the process of setting up a business. After a period of nine months, third-country nationals could additionally be requested to provide evidence that they have a genuine chance of being engaged or of launching a business.

Family reunification: Parliament called for measures on family reunification for researchers to be extended to students.

Mobility rights between Member States: Parliament extended the measures proposed by the Directive as regards mobility between Member States to **volunteers**, as well as researchers, students, and trainees. Mobility measures provided for researchers in the framework of the European programmes should also be extended to **volunteers and trainees** whether they are remunerated or not.

Delay for the authorisation procedure: Parliament called on the competent authorities of the Member States to decide on the complete application for an authorisation and should notify the applicant in writing, as soon as possible and at the latest **within 30 days (the Commission proposed 60 days) from the date on which the application was lodged**. In the event that their national law provides for the possibility of an appeal before an administrative authority, the competent authorities of the Member States shall decide on the appeal at the latest within 30 days from the date on which the appeal was lodged.

Fast-track procedure: the current Students Directive includes an article on fast-track-procedure for issuing residence permits or visas and Parliament re-included this fast-track procedure for **students and school pupils and extending it to researchers.**

Application procedure: lastly, Parliament provided for a measure allowing Member States to facilitate the application procedure by allowing third-country nationals to apply and to be able to complete the procedure for any Member State in the embassy or consulate of the Member State which is most convenient for the applicant.

Third-country nationals: conditions of entry and residence for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. Recast

2013/0081(COD) - 02/05/2016 - Committee recommendation tabled for plenary, 2nd reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the recommendation for second reading contained in the report by Cecilia WIKSTRÖM (ADLE, SE) on the Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast).

The committee recommended the European Parliament to **approve the Council position at first reading without amendment**.

It also approved a joint statement by the European Parliament and the Commission on the ground for rejection specified in point (f) of Article 20(2).

The European Parliament and the Commission understand point (f) of Article 20(2) of this Directive as allowing Member States to reject an application only on a case-by-case basis and taking into account the specific circumstances of the third-country national and the principle of proportionality and on the basis of evidence or serious and objective reasons. The inclusion of this provision in this Directive should not constitute a precedent for future legal migration instruments.

Third-country nationals: conditions of entry and residence for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. Recast

2013/0081(COD) - 11/05/2016

The European Parliament adopted a legislative resolution on the Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast).

In line with the recommendation for second reading made by the Committee on Civil Liberties, Justice and Home Affairs, Parliament **approved, unamended, the Council position at first reading**.

Parliament also approved a **joint statement by the European Parliament and the Commission** on the ground for rejection specified in point (f) of Article 20(2).

The European Parliament and the Commission understand point (f) of Article 20(2) of this Directive as allowing Member States to reject an application only on a case-by-case basis and taking into account the specific circumstances of the third-country national and the principle of proportionality and on the basis of evidence or serious and objective reasons.

The Commission will ensure that Member States implement this provision in line with this interpretation when transposing the Directive, and will inform the Parliament and the Council thereof.

The European Parliament and the Commission consider that the inclusion of this provision in this Directive should not constitute a precedent for future legal migration instruments.

Third-country nationals: conditions of entry and residence for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. Recast

2013/0081(COD) - 05/04/2016 - Commission communication on Council's position

The Commission stated that, despite the changes that the Common position has introduced, the text of the Common position still meets the Commission's original objective to make the EU more attractive for the categories concerned, and to make the legal framework governing their entry and residence more clear and transparent.

The Commission recalled the **main differences** between the Common Position and the original Commission proposal:

Scope:

- the Common position limits the scope of the mandatory rules to researchers, students, trainees and volunteers covered by the European Voluntary Service. Rules for school pupils, volunteers not covered by the European Voluntary Service and au pairs are optional;
- regarding trainees, the Common position abolishes the distinction between remunerated and unremunerated trainees.

General admission conditions:

- the Common position gives Member States the possibility to require the applicant to provide the address where he or she will be residing on its territory;
- it makes it obligatory for Member States to examine applications also when the third-country national concerned is already residing in that Member State.

Approval of research organisations:

- the Common position makes the approval procedure for research organisations optional, and introduces an optional approval procedure for higher education institutions, education establishments, organisations responsible for a voluntary service scheme or entities hosting trainees.

Specific conditions for trainees:

- the Common position introduces the limitation that applicants must have obtained a higher education degree within the two years preceding the date of application or be pursuing a course of study that leads to a higher education degree;
- it also allows Member States to require the traineeship to be in the same field and at the same qualification level as the higher education degree obtained or the course of study being pursued.

Duration of authorisations:

- a duration of authorisations for students and researchers covered by programmes of a minimum of two years (instead of one year for those not covered by programmes) has been provided.

Grounds for rejection:

- the Common position, to a great extent, aligns the grounds for rejection to those of the Intra Corporate Transferee Directive (ICT Directive);
- it adds a ground which allows Member States to reject an application where the Member State has evidence or serious and objective grounds to establish that the third-country national would reside for purposes other than those for which he or she applies to be admitted (Article 20(2) (f) of the Directive)

The European Parliament and the Commission understand point (f) of Article 20(2) of this Directive as allowing Member States to **reject an application only on a case-by-case basis** and taking into account the specific circumstances of the third-country national and the principle of proportionality and **on the basis of evidence or serious and objective reasons**. They consider that the inclusion of this provision in this Directive should not constitute a precedent for future legal migration instrument.

Grounds for withdrawal or non-renewal of an authorisation:

- the Common position, to a great extent, aligns the grounds for withdrawal or non-renewal to those of the ICT Directive.

Equal treatment:

- the Common position provides Member States with the possibility to make the granting of family benefits to researchers dependent on a minimum length of stay. Overall, it still reflects the objective of the Commission proposal to make more transparent which equal treatment rights, based on the Single Permit Directive, the various categories covered by the recast are entitled to.

Third-country nationals: conditions of entry and residence for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. Recast

2013/0081(COD) - 11/03/2016 - Council position

The Council adopted its position at first reading with a view to the adoption of a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast).

The proposed Directive aims to:

- improve the legal framework applicable to the categories of third-country nationals covered by Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service and Directive 2005/71/EC on the conditions of admission of third-country nationals for the purposes of scientific research;
- the scope of the directive to new categories of third-country nationals (remunerated trainees and au-pairs).

Scope: in the Council's position only researchers, students, trainees and volunteers in the **European Voluntary Service appear as mandatory categories** . The categories of pupils, other volunteers and au-pairs are optional in the Council's position.

Regarding **trainees**, the Council decided to do away with the distinction between remunerated and unremunerated trainees. On the other hand, the category of volunteers has been split into those volunteers participating in the European Voluntary Service and others.

More favourable provisions: Member States may either adopt or maintain more favourable provisions.. Member States are also given the possibility to provide for authorisations with a longer duration than what is provided for in the Directive.

Principles: the Council position enables Member Stats to require the applicant to present the documentary evidence required under this Directive for the purposes of admission, either in an official language of the Member State concerned or in any official language of the EU as determined by the Member State concerned.

Volumes of admission: the Council reiterates the principle set out in Article 79(5) TFEU concerning the right of Member States to determine the volumes of admission of third-country nationals coming to their territory for the purpose of work. The Council clarifies that this principle can only apply if the specific category of third-country nationals is considered to be in **an employment relationship in the Member State concerned**. It, furthermore, explicitly mentions that the volumes of admission can never be applied to **students**, even if they are allowed to work during their studies, as by definition they apply to be admitted for the purpose of study.

General conditions for admission: the Council position list, in addition to the valid travel document, **all possible documents** that can be required for entry purposes, depending on the specific national system or the specific situation of the third-country national. It also inserts a new provision enabling Member States to indicate a reference amount which they regard as constituting "**sufficient resources**" as well as a provision enabling Member States to require the applicant to provide the **address** of the third-country national concerned in its territory.

In addition, the Council position:

- states that applications shall also be considered and examined when the third-country national is already residing in that Member State as holder of a valid residence permit or long-stay visa;
- inserts a new paragraph stating that third-country nationals who are considered to **pose a threat to public policy**, **public security** or **public health** shall not be admitted under this Directive.

Approval of host entities: Member States shall be **free to decide** whether they will require that admission under this Directive will take place through approved host entities or not.

The category of researchers: the definition of researchers is enlarged by adding that, in addition to holding a degree giving access to doctoral programmes, they can also be holders of a doctoral degree. The Council position:

- adds a clarification that the **financial responsibility** of the research organisation is limited until the starting date of the permit for job-searching or entrepreneurship issued;
- adds a requirement for the hosting agreement to contain **information on the intended mobility** in second Member States in case that is known at the time of application in the first Member State.

The category of students: the Council adds a specification that the full-time course of study in the EU, for which the student is admitted, can also include a period of training as part of these studies.

In order to allow students to cover part of the cost of their studies they shall be entitled to have **access to the labour market** of the Member State where the studies are undertaken. The Council modifies the Commission proposal by setting the **minimum amount of hours** that students are allowed to work per week at **15**, a balanced compromise taking into account the different national practices.

The Council position explains that access of students to the labour market should be the general rule and Member States should take the situation in their labour markets into account only in exceptional circumstances.

Authorisations to be granted under this Directive: the Council adds further details to the initial Commission proposal concerning the various terms to be entered on the authorisations.

The period of validity of an authorisation for researchers shall be **at least one year**, or for the duration of the hosting agreement where this is shorter.

Member States may allow for the renewal of the authorisations of school pupils and au-pairs under certain conditions. In addition, the Council position provides that the duration of the authorisation for researchers and students, who are covered by Union or multilateral programmes that comprise mobility measures, shall be at least **two years** or equal to the duration of the hosting agreement or studies in case this is shorter (provided certain conditions are met).

As far as **trainees** are concerned, the Council set out that the duration of the authorisation shall be for a maximum period of **six months**. Member States may, however, provide for a longer duration corresponding to the duration of the training agreement in accordance with national law.

Grounds for rejection of an authorisation: the Council position converts a number of the mandatory grounds for rejection into optional ones. The wording in some of those provisions has, however, been aligned with the one in the corresponding provisions of the ICT and Seasonal Workers' Directives.

The Council also inserts several new optional grounds for rejection. It deems important that Member States are able to reject an application: (i) if the host entity or the host family **does not meet the terms of employment** as provided for by applicable laws, collective agreements or practices of the Member State concerned; (ii)where it establishes that the third-country national would **reside for purposes other than for which he or she applies to be admitted**.

Any decision to reject an application shall take account of the specific circumstances of the case and respect the principle of proportionality.

Right to equal treatment: the rights set out in the Single Permit Directive together with the possible restrictions provided therein apply to researchers and students, as well as trainees, volunteers and au-pairs when they are considered to be in an employment relationship in the Member State concerned

Stay for the purpose of job-searching or entrepreneurship: the Council position provides for the possibility for researchers and students to stay on the territory of the Member State that had issued them an authorisation under this Directive, to seek employment or set up a business for a period of **at least 9 months**.

The period after which the Member State concerned may require third-country nationals to prove that they have a genuine chance of being engaged or of launching a business is a **minimum of 3 months**.

The Council also enables Member States to set a **minimum level of degree** (which cannot be higher than a Master's degree or the equivalent) that students must have achieved in order to benefit from this right.